

Law States). The interim rule provided additional flexibility by permitting States with laws that contain exemptions or some other provision that did not fully comply with the criterion, to demonstrate compliance through the use of data.

As a result of the changes made in the interim final rule, three States qualified for funding under the 0.02 supplemental criterion that were not able to qualify previously. These States included California, Ohio and Virginia.

Advocates did not oppose the amendment contained in the interim rule, but expressed some reservations. Advocates stated, "We are not convinced \* \* \* that a 30-day period of suspension is sufficient to make an effective impression on under age 21 drivers. \* \* \* We believe that there is a strong argument for requiring a 90-day suspension for under age 21 supplemental grants even for states that meet the basic grant criteria without an ALR law."

NHTSA adopted the 30-day hard suspension criterion for both administrative license suspension laws (for first offenders who submit to and fail a chemical test) and for 0.02 laws for youth because that is the sanction that is recommended in the Uniform Vehicle Code concerning license suspension laws (see § 6-215, Limited License) and because most States with demonstrated effective license suspension laws provide for a 30-day hard suspension period. NHTSA is not aware of any evidence that State zero tolerance laws which provide for a 90-day hard suspension are any more effective than State zero tolerance laws which provide for a 30-day hard suspension. Of course, States that provide for a hard suspension period of longer than 30 days could qualify for grant funding under this criterion.

Both NAGHSR and Advocates also objected to NHTSA's use of an interim final rule without providing for prior notice and an opportunity for public comment. As explained in that document, the changes were published as an interim final rule, because the regulation relates to a grant program, to which the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are not applicable. Moreover, the agency explained that, even if the notice and comment provisions of the APA did apply, there is good cause for finding that providing notice and comment in connection with the rulemaking action was impracticable, unnecessary and contrary to the public interest, since it would have prevented States from qualifying for grant funds in fiscal year 1994.

The agency's finding was based also on its view that the amendments made in the interim final rule rectified an inequity in the regulation, provided additional flexibility for the States and were consistent with other provisions in the section 410 implementing regulation, which was promulgated subject to notice and a full opportunity for the public to comment.

The agency stated there would be little benefit gained by following the notice and comment procedures with regard to the revisions made by the interim final rule.

NHTSA believes its assessment was correct, as demonstrated by the small number of comments received in response to the interim final rule. However, NHTSA wishes to ensure that the public has a full opportunity to be heard. Therefore, the agency has decided to reopen the comment period to provide the public with an additional opportunity to comment on the agency's action.

The regulation, as amended by the interim final rule, remains in effect and binding. Following the close of the reopened comment period, NHTSA will publish a notice responding to any additional comments it receives and, if appropriate, will amend the provisions of this rule.

Issued on: March 20, 1995.

**Ricardo Martinez,**  
*Administrator, National Highway Traffic Safety Administration.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

#### 24 CFR Parts 44 and 45

[Docket No. R-95-1777; FR-3767-F-01]

RIN 2501-AB85

#### Non-Federal Audit Report Submission Requirements

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD is amending the single audit requirements for the submission of audit reports. HUD's current regulations require recipients of Federal financial assistance from HUD to submit a copy of their audit report to HUD. This rule describes the circumstances under which a "no finding" report need not be submitted.

**EFFECTIVE DATE:** April 24, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Peter Bell, Office of the Inspector General, Room 8180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708-0383. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-9300 (These telephone numbers are not toll free.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HUD is amending the single audit requirements for the submission of audit reports found at 24 CFR 44.10(f) and 24 CFR 45.4.

##### A. 24 CFR Part 44

Part 44 implements the general audit requirements for recipient organizations in OMB Circular A-128 "Audits of State and local governments." The OMB Circular was issued under the Single Audit Act of 1984 (31 U.S.C. 7501-7507) (the Act). The Act requires State or local governments that receive \$100,000 or more a year in Federal financial assistance to have an audit conducted according to the Act's standards.

State or local governments that receive between \$25,000 and \$100,000 a year have the option of having an audit conducted according to the Act's standards or having a grant specific financial audit performed. The requirements for conducting these grant specific audits are described in 24 CFR 44.1(c)(2). State or local governments that receive less than \$25,000 a year are exempt from the audit requirements.

Section 7505 of the Act requires the Office of Management and Budget (OMB) to establish procedures and guidelines to implement the Act. It specifies that OMB shall assign an overseeing, or cognizant, Federal agency to each recipient in order to facilitate the auditing process and ensure that the audit requirements are met. The responsibilities of cognizant agencies are set forth in 24 CFR 44.8.

##### B. 24 CFR Part 45

Part 45 implements the audit requirements for recipient organizations in OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions." Section 45.1 requires that nonprofit institutions whose receipts of Federal financial assistance and outstanding Federal direct, guaranteed, or insured loan balances total \$100,000 or more a year have an audit conducted in accordance with the requirements of OMB Circular A-133.

Nonprofit institutions which meet the \$100,000 requirement but participate in only one Federal financial assistance program may elect to have an audit conducted in compliance with the OMB Circular's requirements or have a program specific audit performed. Nonprofit institutions whose total receipt of Federal financial assistance and outstanding Federal direct, guaranteed, or insured loan balances are between \$25,000 and \$100,000 a year are given the same choice. The requirements for conducting these program specific audits are described in 24 CFR 45.1(b)(2).

Nonprofit institutions that have annual receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totalling less than \$25,000 are exempt from the audit requirements. HUD programs listed in 24 CFR 45.1(c) are also excused from the audit report requirements.

### C. The Amendments

HUD's single audit requirements for the submission of audit reports are contained in 24 CFR 44.10(f) and 24 CFR 45.4. These regulations require recipients of Federal financial assistance from HUD to submit a copy of their audit reports to HUD. The audit report must be submitted regardless of whether HUD is the recipient's cognizant agency or the report is a "no finding" audit report. A "no finding" report is one which expresses an unqualified opinion on the financial statements; identifies no material instances of noncompliance; identifies no material weakness in internal controls; contains no schedule of findings and questioned costs applicable to a HUD program; identifies no potential illegal act which could result in a criminal prosecution; and contains no uncorrected significant finding from a prior audit.

HUD believes that it is not necessary in all cases for recipients to provide it with copies of "no finding" audit reports. A new paragraph (f)(2) has been added to 24 CFR 44.10 and a new paragraph (b)(1) added to 24 CFR 45.4 which permit HUD to provide by program notice that the recipient is not required to submit a copy of the audit report if HUD is not the cognizant agency for the recipient and if the report is a "no finding" report. HUD also believes that even where it is the cognizant agency that the provision of information about the content of certain reports being submitted would effect greater efficiency in their processing.

A new paragraph (f)(5) has been added to 24 CFR 44.10 and a new paragraph (b)(2) added to 24 CFR 45.4

which set forth the requirements a recipient must fulfill in lieu of submitting a copy of the audit report to HUD.

## II. Justification for Final Rule Making

In general, the Department publishes rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the Department is merely alleviating an administrative burden imposed on recipients and program offices by modifying its audit report submission requirements.

## III. Other Matters

### A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

### B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule involve the submission of audit reports by state and local governments that receive federal financial assistance through HUD programs. It effects no changes in the current relationships between the federal government, the states and their political subdivisions in connection with these programs.

### C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on

family formation, maintenance, and general well-being, and, thus is not subject to review under the order. This rule applies only to the submission of audit reports from governmental entities and nonprofit institutions to HUD. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

### D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule alleviates an administrative burden imposed on governmental entities and nonprofit institutions. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

### E. Regulatory Agenda

This final rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

## List of Subjects

### 24 CFR Part 44

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

### 24 CFR Part 45

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 44 and 45 are amended as follows:

## PART 44—NON-FEDERAL AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT

1. The authority citation for 24 CFR part 44 continues to read as follows:

**Authority:** 31 U.S.C. 7501–7507; 42 U.S.C. 3535(d).

2. Section 44.10 is amended by revising paragraph (f) to read as follows:

### § 44.10 Audit reports.

\* \* \* \* \*

(f) (1) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal

department or agency that provided Federal Financial assistance funds to the recipient, except as provided in paragraph (f)(2) of this section.

(2) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition or material weakness in internal controls; the report contains no schedule of findings and questioned costs applicable to a HUD program; the report identified no potential illegal act which could result in a criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (f)(2) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(3) Subrecipients shall submit copies to recipients that provided them Federal assistance funds.

(4) The reports shall be sent within 30 days after completion of the audit, but no later than one year after the end of the audit period, unless a longer period is agreed to with the cognizant agency.

(5) If no report is required to be submitted as provided in paragraph (f)(2)(i) of this section, the recipient must notify the appropriate HUD office in writing that the report met the conditions set forth in paragraph (f)(2) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

\* \* \* \* \*

#### **PART 45—NON-FEDERAL AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS**

3. The authority citation for part 45 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d).

4. Section 45.4 is revised to read as follows:

##### **§ 45.4 Submission of reports.**

(a) Except for the organizations subject to the requirements set forth in § 45.1(c), the report shall be due within 30 days after the completion of the

audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

(b)(1) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition of material weakness in internal controls; the report contains no schedule of findings and questions applicable to a HUD program; the report identified no potential illegal act which could result in criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (b)(1) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(2) If no report is required to be submitted as provided in paragraph (b)(1)(i) of this section, the recipient must notify the appropriate HUD office in writing that report met the conditions set forth in paragraph (b)(1) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

Dated: March 16, 1995.

**Henry G. Cisneros,**

*Secretary.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[DC 13-1-6552a; FRL-5177-7]

#### **Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Disapproval of New Source Review Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is disapproving a State Implementation Plan (SIP) revision

submitted by the District of Columbia pertaining to the regulation of major new and major modified sources in the District of Columbia. The intended effect of this action is to disapprove the District of Columbia regulations because they do not meet the requirements of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This action will become effective May 23, 1995 unless adverse comments are received on or before April 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, SE., Washington, DC 20020.

**FOR FURTHER INFORMATION CONTACT:** Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address.

**SUPPLEMENTARY INFORMATION:** On June 21, 1985 and October 22, 1993, the District of Columbia submitted a formal revision to its State Implementation Plan (SIP). Only the portions of those submittals pertaining to the permitting of new sources is being addressed in this rulemaking. The SIP submittal being addressed consists of District of Columbia Municipal Regulations (DCMR) Title 20, Sections 199 (definitions—only those pertaining to the permitting of new sources), 200, 201, 202 and 204 (permitting), and 299 (reference to the applicability of definitions in Section 199).

The District of Columbia (the District) is part of the Washington D.C. ozone nonattainment area, which includes portions of Maryland and Virginia. Washington D.C. is a nonattainment area classified as serious for ozone and moderate for carbon monoxide and, as such, is required to implement certain requirements including those pertaining to the permitting of major new and major modified sources. The Clean Air Act required that areas such as the District submit adopted regulations applying to the permitting of these major sources by no later than November 15, 1992. In addition, section 184 of the Clean Air Act requires that